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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : James L. Rapier III
Serial Number : 10/613,306
Filed : July 7, 2003
For : Waste Container with
Hidden Slides

RESPONSE TO DISMISSAL OF PETITION TO REVIVE
MAILED OCTOBER 19, 2004

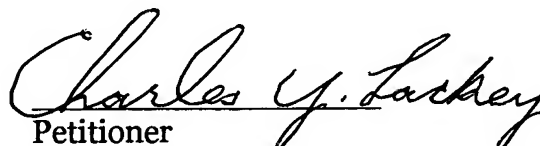
Mail Stop PETITION
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

This Response is being filed to request that the Petition to Revive Application Serial No. 10/613,306 filed November 19, 2004 be withdrawn. Application Serial No. 10/613,308 was abandoned, not Application Serial No. 10/613,306. See the Notice of Abandonment mailed October 19, 2004, a copy of which is attached hereto. Application Serial No. 10/613,306 has not been abandoned as the Petitions Attorney correctly notes in the first paragraph of page 2 of the Decision on Petition mailed March 21, 2005, a copy of which is also attached.

It is respectfully requested that the Petition to Revive Application Serial No. 10/613, 308 filed November 19, 2004 be withdrawn.

Respectfully submitted,


Petitioner
Reg. No. 22,707

Date: March 24, 2005



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/613,308	07/07/2003	James L. Rapier III	

Charles Y. Lackey
 Post Office Box 5871
 Winston-Salem, NC 27113-5871

CONFIRMATION NO. 4311
 ABANDONMENT/TERMINATION
 LETTER
 OC000000014130569
 OC000000014130569

Date Mailed: 10/19/2004

NOTICE OF ABANDONMENT UNDER 37 CFR 1.53 (f) OR (g)

The above-identified application is abandoned for failure to timely or properly reply to the Notice to File Missing Parts (Notice) mailed on 10/02/2003.

- No reply was received.

A petition to the Commissioner under 37 CFR 1.137 may be filed requesting that the application be revived.

Under 37 CFR 1.137(a), a petition requesting the application be revived on the grounds of **UNAVOIDABLE DELAY** must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied by: (1) an adequate showing of the cause of unavoidable delay; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(l); and (4) a terminal disclaimer if required by 37 CFR 1.137(d).

Under 37 CFR 1.137(b), a petition requesting the application be revived on the grounds of **UNINTENTIONAL DELAY** must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied by: (1) a statement that the entire delay was unintentional; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(m); and (4) a terminal disclaimer if required by 37 CFR 1.137(d).

Any questions concerning petitions to revive should be directed to the "Office of Petitions" at (703) 305-9282. Petitions should be mailed to: Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

*A copy of this notice **MUST** be returned with the reply.*

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Customer Service Center

Initial Patent Examination Division (703) 308-1202

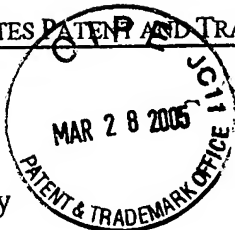
PART 2 - COPY TO BE RETURNED WITH RESPONSE



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Charles Y. Lackey
PO Box 5871
Winston-Salem, NC 27113-5871



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MAR 21 2005

OFFICE OF PETITIONS

Decision on Petition

In re Application of
James L. Rapier III
Application No. 10/613,306
Filed: July 7, 2003
For: Waste Container with Hidden Slides

This is a decision on the petition under 37 CFR 1.137(a), filed November 19, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

Petitioner contends the abandonment of the application was unavoidable because petitioner did not receive the Notice to File Corrected Application Papers mailed October 2, 2003.

The evidence submitted with the petition

The petition states,

In the present application, both Petitioner's assistant and Petitioner reviewed the docket system papers (all 12 months) and the client's complete file when the Notice of Abandonment was received[, October 22, 2004]. No documents from the USPTO or other entities were found regarding this application except the return postcard stamped with the filing date and serial number.

The attorney's declaration states,

Affiant and Affiant's assistant, Diane B. Smith, reviewed the docket records (all twelve months of files) and the file jacket, and no Office Action was found or indicated. Had such Office action been received, it would have been included in the docket system where it would have been seen and reviewed at least twice and included in the file jacket.

A copy of the docket log for the instant application has been submitted. The log indicates that no paper was received between the time the return postcard was received and the time the Notice of Abandonment was received. The docket log indicates that the attorney did not file any papers pertaining to this application after the filing date but before receipt of the Notice of Abandonment.

Facts:

A review of the file indicates a Notice To File Corrected Application Papers was mailed to petitioner on November 6, 2003.

The Notice was received. Petitioner filed a reply to the Notice on November 14, 2003. The reply identifies the application by application number, inventor, filing date, and title. The reply states, "In response to the Notice to File Corrected Application Papers in the above-referenced application mailed November 6, 2003, a copy of which is enclosed, corrected informal drawings for Figures 1a, 4a to 4c are enclosed." Petitioner filed a copy of the Notice to File Corrected Application Papers with the reply. The reply bears the attorney's signature.

Analysis:

Petitioner filed a timely reply to the Notice to File Corrected Application Papers and the Office of Initial Patent Examination has not mailed a Notice of Abandonment for *this* application. Therefore, the Office can not grant the petition since the application does not appear to be abandoned.

Since the application is not abandoned, the Office cannot withdraw the holding of abandonment due to non-receipt of the Notice to File Corrected Application Papers.

Application no. 10/613,308:

Petitioner notes the application number listed on the Notice of Abandonment is application no. 10/613,308 and not application no. 10/613,306. Petitioner notes the application number listed on the Notice to File Corrected Application Papers is application no. 10/613,308 and not application no. 10/613,306. However, petitioner states the application number on both Notices is incorrect.

The basis for petitioner's determination that the application number listed on the Notices is incorrect is unclear. Application no. 10/613,308 is an application filed by petitioner. The filing date and first named applicant listed on the Notices are also the filing date and first named applicant for application no. 10/613,308.

If petitioner wishes to revive application no. 10/613,308, then a petition must be filed for that application. As of December 8, 2003, the petition fee for a small entity under 37 CFR 1.137(a) is \$250 and the petition fee under 37 CFR 1.137(b) is \$750.

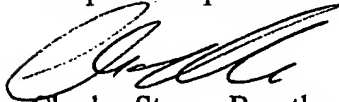
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By facsimile: (703) 872-9306
 Attn: Office of Petitions

If a request for reconsideration is filed, and a decision on the new petition is not received within three months, petitioner may wish to call the number below to check on the status of the renewed petition.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.


Charles Steven Brantley
Petitions Attorney
Office of Petitions

Attached: Copy of Notice to File Corrected Application Papers for the instant application
 Copy of first page of petitioner's reply filed on November 14, 2003